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An Accounting of the Filibuster:

The Alberta Legislature, October 28 - December 15, 1981

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Great drama unfolded in the Alberta Legislature during the 1981 fall sittings as the unusually calm and business-like Assembly became the stage for an historic and unprecedented filibuster. Public business was obstructed by the theatrics of the protagonist (embodied in the combined forces of Her Majesty's Loyal Opposition), reaching a climax with an all-night debate and ending tragically with the invocation of closure for the first time in Alberta's history. Throughout the drama, a spotlight focused on the Assembly, probing the dark holes of governme[illegible]earching for accountability which, although the star-billing in a sys[illegible] of responsible government, never got its cue. This is the stuff of parliament!

The obstruction of public business in a parliamentary democracy is an attack upon the first conditions of parliamentary existence: liberty of speech, and government by majority. Although obstruction has become a permanent feature of modern procedure it is difficult to justify the abuse of these fundamental principles upon which parliamentary institutions are based, and from which their powers flow. The historic filibuster of the Third Session of the 19th Legislature of Alberta created such a predicament. What justification exists to vindicate six opposition members who held the political authority of seventy-two government members ransom, imposing their will on the majority and abusing their privilege of speech? An examination of the issue over which the filibuster was waged, and the attitudes of the Executive and the Legislature with regard to that issue, establishes not only the legitimacy, but also the necessity of the filibuster in the interests of parliamentary democracy in the Alberta Legislature.

Accountability, or rather the lack thereof, for Heritage Fund expenditures and investments was the issue which sparked the filibuster. Accountability is a fundamental concept in the theory of parliamentary responsibility. Basel Chubb, in The Control of the Public Expenditure, states:

> It has been a major fact of English political and constitutional history that the management of finance is a basic essential of responsible government. . .(The control of taxation and supply by the House of Commons) ensures that governments are responsible and will obey. . .and will answer for their actions.[1]

In order for governments to be truly responsible, therefore, legislatures must hold them accountable for their management of the public purse.

Accountability for control of the public purse is a long established

principle of democratic government. Aristotle wrote in The Politics

> To protect the treasury from being defrauded, let all public money be issued in front of the whole city, and let copies of the accounts be deposited in the various wards.[2]

In his Report on British North America, Lord Durham maintained that

> . . .it is incumbent upon an elected body to have the right and the reponsibility to deal with the allocation of funds in public so that there will be public scrutiny to avoid misapplication and misuse.[3]

Studying the problem of accountability, the Royal Commission on Fincancial Management and Accountability stated that

> Accountability is the fundamental prerequisite for preventing the abuse of delegated power and for ensuring, instead, that power is directed toward the achievement of broadly accepted national goals with the greatest possible degree of efficiency, effectiveness, probity, and prudence.[4]

Flowing naturally from an assembly's prerogative to hold the executive accountable is its sovereignty. Accountability for stewardship has been a major factor in the struggle between the Crown and Parliament for supremacy throughout British Parliamentary history. The right to an accounting by the Crown, and an audit of that accountability was claimed and granted as far back as the thirteenth and fourteenth centuries.[5]

The right clearly exists. With that right comes a responsibility to exercise that right. Speaking in the British House, the great parliamentarian Gladstone emphasized this responsibility

> It is undoubtedly the business of the House of Commons to be responsible not only for the inception of all public expenditures,

> but also to follow that money. . .until the last farthing is accounted for.[6]

An assembly which fails to carry out its responsibility to hold the executive accountable is in effect surrendering its sovereignty. An unexercised right of control is tantamount to a loss of control. Edmund Burke, the great eighteenth century parliamentary orator and political theorist, emphasized the dangers of a parliament that has lost the respect of the executive

> A House of Commons respected by its ministers is essential to his Majesty's service: it is fit that they should yield to Parliament, and not that Parliament should be new-modelled until it is fitted to their purposes. If our authority is to be held up when we coincide in opinion with his Majesty's advisers, but is to be set at nought the moment it differs from them, the House of Commons will shrink into a mere appendage of administration, and will lose that independent character. . .[7]

In the opinion of the combined forces of Alberta's opposition parties, the Alberta Legislature was shrinking into a mere appendage of administration and losing its independent character with regard to the Heritage Trust Fund, an opinion formed by the executive's refusal to account for the management of those monies. The issue was not a new one: the need for accountability has been argued for since the Fund was established in 1976. During the Second Reading debate on Bill 35, the Alberta Heritage Savings Trust Fund Act, Calgary Buffalo M.L.A. Ron Ghitter argued

> Mr. Speaker, I've come to the conclusion in my brief experience in this Legislature that procedures in this House are tedious, often frustrating, time-consuming, and to many of us often uneventful.

But the very existence of this Legislature, and the powers that reside in this Legislature and not in the cabinet or elsewhere, acts as an immense inhibitor and as a window to the province for those who communicate elsewhere what is being said. The very existence of a form of debate for matters of all natures acts in a system that has been tried and proven successful and has sustained long after politicians and political parties have moved down the pike.

It is my submission that that basic premise of democratic responsibility should not be devoid or removed from an act so vital and important as The Alberta Heritage Savings Trust Fund Act. This Legislature must not become a rubber stamp, Mr. Speaker. This Legislature must be seen to be an active, open place. This Legislature must be regarded by those on Main Street, Alberta, as being the place where basic decisions are made in the open.

Mr. Speaker, this is the age of political accountability. It is the age when our citizens demand political accountability, both within this Legislature and on Main Street. Frankly, I don't know why the government needs the powers granted by this bill or in fact even wants them. I think it would be better to debate here the immense responsibility the government is assuming by trying to deal, in a sense, and I'm sure in an honorable and sincere way, with these funds before proceeding on that basis. I do not accept the premise that this Legislature becomes an unwarranted encumbrance upon decision-making. In fact, I sometimes worry that it should ever be regarded as that type of body.

Mr. Speaker, historically governments that have endeavored to circumvent the Legislature in any way have been at times regarded

by those who are uninitiated as authoritative, and have been washed upon the rocky shores of electoral defeat.[8]

Accountability came to the fore this fall as a result of independent member for Calgary Buffalo, Tom Sindlinger's obtaining a management letter from the Auditor General to the Deputy Provincial Treasurer which discussed, among other things, serious problems with regard to management and controls, thereby giving weight to the oft stated need for greater accountability.

Great concern was expressed by the Auditor General in the leaked document with regard to poor management controls in the Fund's investment division which resulted in the absence of any documentation for significant investment losses amounting to $60.3 million over a three year period from 1979 to 1981. While the investment transactions on which the losses were taken could be identified, neither the traders nor the investment managers could provide the Auditor with explanations of their purchases and sales transactions, due to the lack of proper documentation. Analyses of the substance of transactions would be impossible due to the inability to determine which investments were acquired and when poor investments were disposed of.[9] The situation, in the opinion of the Auditor General, created "considerable scope for collusion between an investment trader employed by the Treasury Department and someone in one of the brokerage houses, which could result in fraud".[10]

Demands by the Opposition for the release of two further management letters regarding control systems and management procedures of the Fund's investment division was met by the government with an uncategorical NO! Responding to repeated opposition requests for the information in the Assembly, the Provincial Treasurer, the Honorable Lou Hyndman, illustrated the attitude of the government with regard to accountability

> Mr. Speaker, the answer again is no. We've had that debate on several occasions and, as I indicated, the need for candor on the part of the advice of the independent Auditor General is essential. As well, it's important that control systems, which are and have been set up by those involved in the investment area, are kept confidential so we can be assured that there will not be opportunities for fraud or collusion.[11]

An executive which jealously guards information, justifying its doing so by claiming a need for confidentiality, could hardly be called responsible or accountable. Accountability in a system of responsible government requires the executive to provide the elected assembly with complete information regarding its expenditures and investments so that the Assembly can carry out its duties from an informed position. It does not entitle an executive to selectively inform or refuse to inform elected members.

The Provincial Treasurer, the Honorable Lou Hyndman, declared in the House that he was prepared

> to take every step necessary that will ensure that (the government has) and will continue to have one of the best, and always improving, management control systems with respect to the dollars under our administration.[12]

When asked to provide some evidence to verify that claim, the Provincial Treasurer took refuge in the need for confidentiality. In effect, the Assembly was forced to take the government's word. Possibly the statement was true. Possibly the management control systems were improved. Possibly no malfeasance, fraud or collusion did occur relating to the marketable securities owned by the Fund. Possibly marketable securities owned by the

Fund were adequately safeguarded. Possibly the $60.3 million loss was a trading loss caused by selling bonds which had fallen in value due to rising interest rates and unfavourable money market conditions. Possibly "the best. . . management control system did exist". Possibly? Possibly not. Expecting the Assembly to accept, unquestioned, what they are told is a far cry from government accountability.

Further, opinions based on incomplete information and assumptions create distorted perceptions. They also raise doubts and skepticism regarding the accuracy and completeness of the information provided. Such doubts were expressed by the Leader of the Opposition, the Honorable Ray Speaker, in the Assembly

> . . .That's why we are asking for management documents. We're asking for what happened during the trader's selling and buying. We are asking for the new management procedures in place so we can be assured that things are in good shape. We will make that judgement as legislators.
>
> It is the responsibility of the Legislature of this province to make the judgement as to whether the management procedures are as we desire them to be. It is our responsibility to make the judgement as to whether the traders provide adequate notes or did the right thing in investing millions of dollars of the taxpayers' money here in Alberta. I want to know that information Mr. Speaker. If we wouldn't have had the document, this management letter, passed on to us, we wouldn't have known there were some difficulties with regard to management procedures. We wouldn't have known some management deficiencies existed. We wouldn't even have known. . .[13]

The filibuster was an attempt to know.

In as much as the sovereignty of the Assembly is achieved through its holding the executive accountable, the attitude of the government shows a disregard for that authority. However, the executive alone is not responsible for its encroachment on that authority. The Assembly itself must bear responsibility for the situation. The Alberta Legislature has ignored its responsibilities from the Funds' inception. In spite of the fact that Bill 35, the Alberta Heritage Savings Trust Fund Act granted the executive unchecked control over 80 per cent of the Fund's monies, rendering the Select Standing Committee on the Trust Fund and thus the Assembly, an ineffectual post-facto, rubber stamp for the executive's expenditures and investments, the Act was passed five votes to 62. The five dissenting votes were those of the four Socred members, and N.D.P. member, Grant Notley. Only one Tory member, Calgary Buffalo M.L.A. Ron Ghitter, argued for greater accountability for Fund monies. Unfortunately, he was absent for the vote.[14]

Although the executive enjoys extensive control over the Fund, the Assembly does have legal means to hold it accountable. Section 5 of the Alberta Heritage Savings Trust Fund Act requires the passage of Special Appropriation Acts each year by the Legislative Assembly authorizing the transfer of 30 per cent of the Province's non-renewable resource revenue to the Fund. Theoretically, therefore, the Legislature could exercise total control over the Fund. If it were dissatisfied with the executive's handling of the Fund, it could and indeed should, withhold its approval of the Special Appropriation Act authorizing the transfer of monies into the Fund. Without the Assembly's approval there would be no funds, and the executive could make no expenditures or investments unless it agreed to make changes as specified by the Assembly.[15]

No better case existed for the Assembly to have exercised the powers it enjoys under Section 5 of the Alberta Heritage Savings Trust Fund Act than during the filibuster. The Assembly had legitimate cause for concern over the Executive's handling of the investment division of the Fund. The Auditor General recorded investment losses totaling $60.3 million accumulated over three consecutive years. In the second of those three years he wrote a letter to the Deputy Provincial Treasurer expressing great concern over management controls and noting the "considerable scope for collusion (which could result in) fraud". During the 1980-81 fiscal year another $13.7 million was lost. In view of that information, coupled with the fact the the Executive refused to account for $60.3 million which the Assembly had granted it in the past, or to provide more than verbal assurances that the aforementioned management problems had been corrected, the Assembly did not discharge its responsibilities during the 1981 fall sitting when it passed Bill 69, the Alberta Heritage Savings Trust Fund Special Appropriation Act, 1982-83 granting the Executive additional funds.

The Assembly neglected even to demand of the Executive an explanation of another very serious matter regarding the Fund's investment division which was also raised by the Auditor General in the same leaked management letter. That concern dealt with the lack of a formal plan for the investment of residual funds accrued by the investment division. Section 10 of the Alberta Heritage Savings Trust Fund Act empowers the Provincial Treasurer to invest the residual funds of the investment division. However, as of March 31, 1980 invested residual funds amounted to a total of $1.4 billion. Further, no formal structure existed for approval, implementation and reporting of those investments. Thus the Provincial Treasurer was investing enormous sums without any established parameters which could be used by the Auditor to measure the

performance of those investments.[16] This concern was never even raised in the House.

The cause of accountability was set back even further during the filibuster by the defeat of Bill 258, An Act to Amend the Auditor General Act. Introduced by the Honorable Ray Speaker, Leader of the Official Opposition, Bill 258 amended Section 28 of the Act, thereby requiring the Provincial Treasurer to table in the Assembly all management letters and reports made by the Auditor General following his examination and audit of any government department, provincial agency, or Crown-controlled corporation. The Bill was defeated after the second reading debates with only five opposition members supporting it and 44 government members defeating it.[17]

In defeating Bill 258 the 44 government members were in effect abdicting their responsibilities to the people of Alberta. Through the amendments it introduced to the Auditor General Act, Bill 258 would have increased significantly the scope and the amount of information which the Executive was required, by law, to table in the Assembly regarding its management of all public money. The amendments therefore, would have forced the Executive to be more accountable.

Further, the defeat of Bill 258 discredited all claims by Tory members that the executive had acted responsibly in not tabling the other two management letters. Government members rationalized the executive's refusal to table the other letters (and their own refusal to demand them) by including "management letters" within the definition of "audit working papers" which, under the provisions of Section 27 of the Auditor General Act, were prohibited from being tabled in the Assembly or before a Committee of the Assembly.[18] The amendments would have given those members the legal authority to demand the Executive to table the letter which, they claimed, under the

existing provisions of the Auditor General Act they had no right to demand (and the executive had no obligation to provide). However, in defeating Bill 258 those members voted not as parliamentarians intent with preserving their right and duty as an elected body to hold the executive accountable, but as Tories, content with surrendering their sovereignty (and thus purpose) for the good of the party.

Thus the filibuster can be accounted for. In obstructing public business for 35 days, ignoring the will of the majority, and abusing their privilege of speech, the opposition members showed great disrespect for Alberta's parliament. However, when a parliament can no longer, or will no longer, hold the executive accountable, then it has no reason for existing. Accountability is the raison de'etre of parliament, without which its legitimacy and sovereignty are lost.

A motion of closure brought the filibuster to an end on December 15, 1981. During the debates on the motion, the ruling of Speaker Brand, the first Speaker in British parliamentary history to invoke closure, was quoted. Speaker Brand invoked closure on January 31, 1881 to end the obstruction by Irish nationalists claiming that "the dignity, the credit and the authority of the House are seriously threatened, and it is necessary that they be vindicated".[19] Ironically, the obstruction by the united opposition forces in the fall of 1981 was an attempt to vindicate the dignity, credit and authority of the Alberta Legislature Assembly.

Prologue

On February 25, 1982 the Auditor General submitted to the Assembly his Report. . .On Certain Matters Related to the Alberta Heritage Savings Trust Fund as had been requested of him by Premier Lougheed on December 3, 1981. Following an examination of the issues which had been raised by the leaked management letter, the Auditor General concluded that throughout the life of the Alberta Heritage Savings Trust Fund:

a) no malfeasance, including fraud or collusion (had) occured relating to marketable securities owned by the Fund;

b) satisfactory action was taken by the government respecting observations and recommendations made pursuant to the Auditor General Act in connection with marketable securities owned by the Fund; (and)

c) marketable securities owned by the Fund were adequately safeguarded and accounted for.

The Auditor General explained the $60.3 million loss as a "trading loss caused by selling bonds which had fallen in value because of rising interest rates and other money market conditions".

The Auditor General also included in his report a discussion of the accountability of the Alberta Heritage Savings Trust Fund to the Legislative Assembly, and the effect of the Fund's growth on that accountability. Recognizing that investments representing 80 per cent of the Fund's assets were being made by the Executive under broad statutory provisions, and that there had been a substantial increase in the size of the Fund, he maintained that a 'significant portion of the total Alberta "public purse" (was) being expended under statutory provisions, rather than being renewed and approved annually by the Legislative Assembly'.

As a result, the Auditor General made five recommendations designed to improve Executive accountability to the Assembly for the expenditure of Heritage Fund monies. Arguing that

> in future, if prior review and approval by the Assembly were required each fiscal year for proposed funding of government entities from the Heritage Fund, (this) would improve the control exercised by the Legislative Assembly over investments under the Alberta Investment Division by providing Members with an opportunity to review, debate and approve funding on an annual basis.
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> Following the end of each fiscal year, the financial affairs of government entities receiving Heritage Fund monies would be subject to scrutiny by the Select Standing Committee on Public Accounts and/or the Select Standing Committee on the Alberta Heritage Savings Trust Fund Act. This would have the effect of bringing the use of approximately 60% of the Heritage Fund's assets under accountability cycle controls similar to those exercised by the Legislative Assembly over expenditures from the General Revenue Fund.

On April 7, 1982 N.D.P. member Grant Notley introduced Bill 242, An Act to Implement Recommendations of the Auditor General. It did not move on to second reading. No other bills were introduced during the 1982 spring sitting dealing with the Auditor General's recommendations.

Footnotes

1. John J. Kelly and Hugh R. Hanson, Improving Accountability: Canadian Public Accounts Committees and Legislative Auditors (Ottawa: Canadian Comprehensive Auditing Foundation, 1981), p. 1-2.
2. Alberta Hansard, April 26, 1976, p. 868.
3. Ibid.
4. John J. Kelly and Hugh R. Hanson, op cit, p. 3.
5. Ibid.
6. Ibid., pp 1-6.
7. Eugene A. Forsey, The Royal Power of Dissolution of Parliament in the British Commonwealth (Toronto: Oxford University Press, 1943), p. 9.
8. Alberta Hansard, April 26, 1976, p. 869.
9. Douglas W. Rogers, Report of the Auditor General on Certain Matters Related to the Alberta Heritage Savings Trust Fund. Appendix II, p. 2.
10. Ibid.
11. Alberta Hansard, December 1, 1981, p. 1973
12. Alberta Hansard, November 2, 1982, p. 1372
13. Alberta Hansard, November 19, 1981, p. 1735
14. Alberta Hansard, April 23, 1976, pp. 866-870.
15. Section 5 of the Alberta Heritage Savings Trust Fund Act, c. A-27 of the Revised Statutes of Alberta 1980, pp. 2-3.
16. Douglas W. Rogers, op cit, p. 1.
17. Alberta Hansard, November 19, 1981, pp. 1730-1752
18. Section 27 of the Auditor General Act, c. A-49 of the Revised Statutes of Alberta 1980, p. 10.
19. Josef Redlich, The Procedure of the House of Commons, trans. Ernest Steinthal, vol. 1, London: Archibald Constable & Co. Ltd., 1908, p. 159.

Bibliography

Alberta Hansard for the Third Session of the 19th Legislature.

Calgary Herald, articles and editorials, October 14 - December 20, 1981.

Edmonton Journal, articles and editorials, October 14 - December 20, 1981,

Forsey, Eugene A. The Royal Power of Dissolution of Parliament in the British Commonwealth. Toronto: Oxford University Press, 1943.

Kelly, John J. and Hugh R. Hanson. Improving Accountability: Canadian Public Accounts Committees And Legislative Auditors. Canadian Comprehensive Auditing Foundation, 1981.

Laundy, Phillip and Norman W. Wilding. Encyclopaedia of Parliament, Fourth edition. London: Cassell, 1958.

Lethbridge Herald, articles and editorials, October 14 - December 20, 1981.

May, Sir Thomas Erskine. Treatise on the Law, Privileges, Proceedings, and Usage of Parliament. Sir David Lidderdale, editor. Nineteenth edition. London: Butterworths, 1976.

Pratt, L. R. and A. Tupper, "The Politics of Accountability: Executive Discretion and Democratic Control", Canadian Public Policy, pp. 254-264.

Redlich, Josef. The Procedure of the House of Commons. Trans. Ernest Steinthal, vol. 1, London: Archibald Constable & Co. Ltd., 1908.

Report of the Select Standing Committee on the Alberta Heritage Savings Trust Fund Act, November 1981.

Revised Statutes of Alberta, 1980, Vol. 1.

Rogers, Douglas W. Report of the Auditor General of Alberta on Certain Matters Related to the Alberta Heritage Savings Trust Fund. February 25, 1982.